

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **EASTERN DIVISION**  
11

12 **LARRY ANGEL MARTINEZ,** ) **NO. EDCV 17-331-MWF(AJW)**  
13 **Plaintiff,** )  
14 **v.** ) **MEMORANDUM AND ORDER**  
15 **COUNTY OF RIVERSIDE SHERIFF** ) **DISMISSING ACTION WITHOUT**  
16 **DEPARTMENT, et al.,** ) **PREJUDICE**  
17 **Defendants.** )  
18

19 Plaintiff, a state prisoner proceeding pro se and in forma pauperis, filed this complaint pursuant to  
20 42 U.S.C § 1983. On April 14, 2017, the Court issued an order directing plaintiff to sign and file an  
21 authorization to disburse funds from his prison trust account to pay the filing fee. [Dkt. 7]. Plaintiff was  
22 cautioned that his failure to file a signed authorization form within the time allowed would result in  
23 dismissal of this action. Plaintiff's authorization form was due on May 12, 2017. As of the date of this order,  
24 plaintiff has neither filed the authorization form nor requested additional time within which to do so.

25 It is well-established that a district court may dismiss an action for failure to prosecute, failure to  
26 follow court orders, or failure to comply with the federal or local rules. See Fed. R. Civ. P. 41(b); C. D. Cal.  
27 Local R. 41-1; Link v. Wabash R.Co., 370 U.S. 626, 629-630 (1962); Ghazali v. Moran, 46 F.3d 52, 53 (9th  
28 Cir.) (per curiam), cert. denied, 516 U.S. 838 (1995); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.),  
cert. denied, 506 U.S. 915 (1992); Carey v. King, 856 F.2d 1439, 1441 (9th Cir. 1988) (per curiam).

1 In determining whether to dismiss a case for failure to prosecute or failure to comply with court  
2 orders or rules, a district court should consider the following five factors: (1) the public's interest in  
3 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the  
4 defendants; (4) the availability of less drastic sanctions; and (5) the public policy favoring disposition of  
5 cases on their merits. See In re Phenylpropanolamine (PPA) Prod. Liability Litig., 460 F.3d 1217, 1226-  
6 1228, 1234-1252 (9th Cir. 2006) (discussing and applying those factors); Pagtalunan v. Galaza, 291 F.3d  
7 639, 642 (9th Cir. 2002) (same), cert. denied, 538 U.S. 909 (2003); see, e.g., Ferdik, 963 F.2d at 1260-61  
8 (failure to comply with orders); Carey, 856 F.2d at 1441 (failure to comply with local rule). Regardless of  
9 whether a litigant's conduct is most properly characterized as a failure to prosecute or as a failure to comply  
10 with court orders or rules, the applicable standard is the same.

11 In this case, the first, second, and third factors favor dismissal. See Pagtalunan, 291 F.3d at 642  
12 (noting that the first factor – the public's interest in the expeditious resolution of litigation – “always favors  
13 dismissal”) (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)); Edwards v. Marin  
14 Park, Inc., 356 F.3d 1058, 1063-1066 (9th Cir. 2004) (discussing the second factor – the court’s need to  
15 manage its docket – and stating that when a plaintiff does nothing, “resources continue to be consumed by  
16 a case sitting idly on the court’s docket”); In re Eisen, 31 F.3d 1447, 1452-1453 (9th Cir. 1994) (with regard  
17 to the third factor – the risk of prejudice – stating that in the absence of a showing to the contrary, prejudice  
18 to defendants or respondents is presumed from unreasonable delay). Further, plaintiff was warned that his  
19 failure to file the signed authorization form would lead to dismissal, so the fourth factor also supports  
20 dismissal. See In re PPA Prod. Liability Litig., 460 F.3d at 1229 (“Warning that failure to obey a court order  
21 will result in dismissal can itself meet the ‘consideration of alternatives’ requirement.”).

22 The fifth factor – the public policy favoring disposition of cases on their merits – weighs against  
23 dismissal, as it always does. Pagtalunan, 291 F.3d at 643 (citing Hernandez v. City of El Monte, 138 F.3d  
24 393, 399 (9th Cir. 1998)). Despite the policy favoring disposition on the merits, however, it remains a  
25 litigant's responsibility to comply with orders issued by the court and “to move towards that disposition at  
26 a reasonable pace, and to refrain from dilatory and evasive tactics.” In re Eisen, 31 F.3d at 1452 (quoting  
27 Morris v. Morgan Stanley & Co., 942 F.2d 648, 652 (9th Cir. 1991)). Plaintiff has not fulfilled that  
28 obligation. Further, while the policy favoring disposition of cases on their merits generally cuts against

1 dismissal, “it does so far less strongly when the relevant dismissal is without prejudice, which, by definition,  
2 permits a re-filing within the applicable statute-of-limitations period....” McDermott v. Palo Verde Unified  
3 Sch. Dist., 638 Fed. Appx. 636, 638 (9th Cir. 2016).

4 Consideration of the relevant factors support the conclusion that dismissal is warranted. See Valley  
5 Eng’rs Inc. v. Elec.Eng’g Co., 158 F.3d 1051, 1057 (9th Cir. 1998) (noting that the five-factor test “amounts  
6 to a way for a district judge to think about what to do, not a series of conditions precedent” to dismissal),  
7 cert. denied, 526 U.S. 1064 (1999); Hernandez, 138 F.3d at 399 (explaining that dismissal is appropriate  
8 when four factors support dismissal or where three factors “strongly” support dismissal).

9 Dismissal under Rule 41(b) may be with or without prejudice. See Fed. R. Civ. P. 41(b); Al-Torki  
10 v. Kaempfen, 78 F.3d 1381, 1385 (9th Cir. 1996). Under the circumstances of this case, dismissal without  
11 prejudice is appropriate.

12 For the foregoing reasons, this action is dismissed without prejudice.

13 IT IS SO ORDERED.

14  
15 Dated: May 26, 2017



16 \_\_\_\_\_  
17 Michael W. Fitzgerald  
18 United States District Judge  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28